

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CHARLES M. STEELE,

Plaintiff,

v.

MICHAEL DEWINE, et al.,

Defendants.

Case No. 2:13-cv-866

JUDGE GREGORY L. FROST

Magistrate Judge Elizabeth P. Deavers

ORDER

This matter is before the Court for consideration of the Magistrate Judge's September 12, 2013 Order and Report and Recommendation. (ECF No. 4.) In that filing, the Magistrate Judge conducted an initial screen of Plaintiff's Complaint under 28 U.S.C. §§ 1915(e)(2) and 1915A and recommended that the Court dismiss Plaintiff's claims against Defendant Michael DeWine and transfer the remainder of the action to the United States District Court for the Northern District of Ohio, Eastern Division, at Cleveland.

In regard to the first course of recommended action, the Magistrate Judge explained that "Plaintiff has failed to state plausible claims for relief against Defendant DeWine." (ECF No. 4, at Page ID # 28.) The Magistrate Judge explained that Plaintiff failed to allege facts implicating DeWine in any conduct toward Plaintiff and that the Eleventh Amendment bars any possible official capacity claim for damages against DeWine.

In regard to the second course of recommended action, the Magistrate Judge explained that because the alleged events involved in this action occurred in Cuyahoga County, venue was

improper. Accordingly, the Magistrate Judge recommended that this Court should transfer the action to the Northern District of Ohio, Eastern Division, at Cleveland, which is located in Cuyahoga County.

Plaintiff has objected to the Order and Report and Recommendation. (ECF No. 6.) When a party objects within the allotted time to a report and recommendation, the Court “shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b). Upon review, the Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1).

In his objections, Plaintiff asks this Court to take notice of the fact that he has filed a motion for leave to file an amended complaint. (ECF No. 7.) Plaintiff asserts that he pleads factual allegations in the proffered amended complaint submitted with that motion that would contravene the Magistrate Judge’s reasoning. Plaintiff then objects to any dismissal of DeWine and the transfer of his case before his being afforded the opportunity to file a more detailed pleading. The filing of the motion for leave to file an amended complaint fails to preclude the dismissal of this action. *Moniz v. Hines*, 92 F. App’x 208, 211-12 (6th Cir. 2004) (holding that “a district court may not permit a plaintiff to amend his complaint to defeat dismissal under 28 U.S.C. § 1915(e)(2)”). Plaintiff has submitted no other substantive objections.

Having conducted a *de novo* review and after consideration of the Order and Report and Recommendation and the objections, this Court concludes that Magistrate Judge’s reasoning is correct. The Court therefore **OVERRULES** Plaintiff’s Objections (ECF No. 6), **ADOPTS** the Magistrate Judge’s Order and Report and Recommendation (ECF No. 4), **DISMISSES**

Plaintiff's claims against Defendant Michael DeWine pursuant to 28 U.S.C. §§ 1915(e) and 1915A, and **TRANSFERS** the remainder of this action to the United States District Court for the Northern District of Ohio, Eastern Division, at Cleveland.

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE